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ABSTRACT

The paper explores ways in which licensing of out-of-home care can be strengthened to improve child care and prevent child abuse. Protections for general child care are noted, including reference checks, review of child abuse report registers, and educational requirements. Additional activities other than rule enforcement activities that are nevertheless part of the licensing process are also discussed, including routine discussion with staff and children, investigation of alleged abuse by both licensing staff and protective services staff, and advocacy efforts on the part of licensing staff. (CL)

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Licensing's Contribution to the Prevention of Child Abuse

While licensing of out of home care has been one of the main lines of defense against abuse of children and abusive conditions, the recent surge in reported abuse and neglect shows that this protection is not sufficient. Clearly additional protections are necessary. Some of the protections needed must come from sources other than licensing, especially parents. There are numerous ways however that licensing can be strengthened to improve child care and to prevent child abuse. This pertains to all kinds of licensed children's services and in fact has comparable applicability to licensure of adult care.

Any significant effort to come to grips with the problem must be preceded with two assumptions. The first is that there is no singular answer or panacea. However there are answers. There are numerous partial answers which cumulatively would have a major positive impact. Second, there is no possibility of totally solving the problem. Life does not offer absolutes or guarantees in this area more than in any other area. An assumption that any occurrence of abuse after corrective measures are taken constitutes failure would make any effort futile. Licensing can reduce the likelihood of abuse but cannot assure its riddance.

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The protections of licensing can be applied to all types of licensed child care, and in most circumstances on two levels. That is, what is required of licensees also can be required of employees of the licensee; the licensee can be held accountable for applying the same criteria to his/her staff that licensing applies to the licensee if the rules specifically mandate it.

Licensing is a statutorily based quality control process. It enforces licensing rules which are mandates and prohibitions for persons seeking or holding licenses. The rules are written by a representative group of people within the state and prohibit specific activities or conditions considered harmful to children and mandate other conditions or activities which are considered conducive to their well being. Licensing staff determine compliance with licensing rules and carry the major part of the responsibility for enforcing them.

Most of the following licensing components currently are carried out in some States but not with broad consistency. They are suggested here as a specific, realistic but also cumulative approach to child abuse prevention; they also would generally improve the children's programs.

A. Protections for General Child Care

1. Reference checks: normally references are obtained by letter from persons named by the applicant, or employee. Personal contacts are far more productive; they should include at least telephone calls. Licensing rules and procedures can mandate this for applicants for a license. Licensing rules in turn can mandate their doing it in their hiring. Conversations with references frequently reveal concerns which would not be put into a letter. The contents can be confirmed in writing.

References should not necessarily be limited to those given by an applicant for a license or employment. When licensing staff or an employer believe that there may be relevant information which is not being shared they should be free to explore further.

There are times where licensing staff need to provide information to others; sometimes this is necessary in order to obtain information, and at other times to directly protect children. An authorization for release of information can be printed on the license application form, making such authorization virtually automatic. A licensing rule could require that licensees also have such a statement on employment applications.

2. A record of previous employment reveals a good deal about a person, and also provides a trail for further investigation if it is needed. An employment history can be required of applicants for a license, and through licensing rules employers can be required to obtain employment histories from persons who apply to them for employment.
3. The record of child abuse reports probably is the single most important indicator of abuse potential for an individual. The most fruitful source of information on this is a central child abuse report register. Convictions of abuse should eliminate consideration of licensure or employment; both can be prohibited by licensing rule.

Most child abuse reports do not result in convictions and they include persons who in fact are innocent. Allegations also may be substantiated without leading to conviction. Because of the fact that some allegations are unfounded, most States have been reluctant to use such reports since they are confidential and disclosure could lead to lawsuits. This valid concern often has led to the extreme of ignoring them entirely. Because the primary concern is the safety of children, this information should be used.

All applications for licensure and child care employment can be screened against an abuse report registry, and if there has been a report the matter can then be discussed with the applicant. The information must be held in confidence by licensing staff or the employer at least until the applicant decides to proceed with the application, or to withdraw it. If the applicant decides to proceed the information generally would be included in the licensing or employment file. Some States may consider it necessary to mandate this by law with provision for immunity. This is a far less drastic, and more focused action than fingerprinting all applicants.

Negative licensing actions, whether based on this or any other reason are of course subject to appeals and hearings.

Licensing staff must be exceedingly careful to protect the rights, and the reputations, of persons wishing to provide child care, particularly those who may have been falsely accused. This caution however must be balanced against licensing staff's primary responsibility which is to protect children.

Some State licensing laws and/or rules contain the term "good character" as a condition of licensure. This term can be invaluable. Generally it is not helpful in the abstract, that is when no serious problems have come to the attention of licensing staff. However when serious acts occur and are not specifically prohibited by rules, it can be used as a basis for follow-up investigation or to take negative licensing action. This terminology can be incorporated into the licensing rules to include both applicants and their employees.

4. Educational requirements, if task focused, can serve to screen out those who have not specifically prepared themselves for the activity for which they are applying. The training has some direct job performance value, and the process tends to serve as a deterrent for persons with tendencies toward perversion because it requires a sustained, disciplined effort without providing immediate gratification. It also can be expected to result in more job focused performance, with greater job satisfaction from appropriate activities. The comparative licensing study commissioned by the Administration for Children, Youth and Families, and published in the July, 1983 issue of Young Children, for example, indicated that staff education in child development resulted in a higher "quality of life" in day care centers.

It is reasonable to assume that training in residential child care would have a comparable positive effect in child care institutions. This can mandated by licensing rule.

5. The above study also indicated that group size (not necessarily staff ratio) had a strong impact upon the quality of day care. Group size, more specifically the "living unit" in child care institutions, is a highly significant factor in staff control and in child/staff relationships. It is difficult to manage groups larger than 10 in residential care with positive methods. This factor may not significantly control sexual abuse, but it can directly affect other kinds of abuse. This factor can be controlled by licensing rule.
6. Staff development and in-service training are significant factors in helping all staff to be mission oriented, program focused and work in harmony with each other. When staff perform knowledgeably and cooperatively, positive job satisfactions are greater, positive control of the children is greater and the likelihood of their feeling anger toward the children is reduced. Licensing rules can mandate training. Many states require 40 hours of training annually for residential child care staff. For family foster homes, licensing rules can mandate that the child placing agency which placed the children provide or arrange training for foster parents; the

rules for family foster homes can mandate that the foster parents make use of a given amount of available training. Comparable rules can be applied to day care centers and to day care homes, particularly if information and referral ("placement") agencies are involved.

Licensing rules can mandate only what is possible. They cannot, for example, create training. Since extensive training materials and training programs have been made available in recent years, it is reasonable to mandate that group care licensees provide or arrange for training and that a certain percentage of their staff have received a given amount of training. Over 15,000 day care staff have received Child Development Associate Training Since 1975. At least 50,000 residential child care staff have received training in the basic residential care course since 1979. Both types of training are continuing. Certification programs for residential child care staff are operating or being developed in at least 20 States. Certification also has education and training requirements.

Licensing staff often are in a position where they can help to make training available and to inform providers of training that is available. Frequently they are involved directly in providing training. Caution is needed here however in that extensive training of providers by the same

person who regulates them is a conflict of roles which can cause complications in both roles.

7. Parent involvement can be one of the most significant deterrents to child abuse; it should be encouraged and in some respects mandated. This may include their direct contact with their children, their involvement in the program including advisory committees, and in some instances, specialized services provided to the parents. Licensing rules can be enforced only to the licensee, and sometimes parents are not able or willing to be involved. Therefore rules must be written to hold an agency, center or home responsible for making provision for parent visitation and involvement, or to make assistance available to them. They cannot however hold the parents accountable for non-cooperation. Day care and day care home rules can require that parents be permitted to visit the child and to observe the program at any time. Similar requirements can be made of family foster homes and child care institutions as well as other factors having to do with case planning and implementing that plan. Licensing rules for child placing agencies can require effort to involve parents in case planning, whether the agency has placed the child into the care of a family or a child care institution. When case assessments indicate that parents have special needs the agency which removed and placed their children has

commensurate responsibility to assist them to restore the integrity of the family. This also can be mandated by rule.

8. With children in foster care, isolation from their families is a strong contributing factor to their being abused. The distance between the parents and the care giver is a major determinant of whether frequent visits are possible. Placement agencies can be mandated by rule to place children within a reasonable distance from their families, with provision for documented necessary exceptions. Placement of children more than three hours transportation time away from their families, especially into other States, is tantamount to an invitation to abuse; such long distance placements can be sharply reduced by rule.

9. Occasionally child placing agency staff place children into a child care institution and, following that, virtually lose contact with the child. This also occurs with children placed into family foster homes, but is less likely. Purchase of child placement agency services by State agencies may increase the distance between the staff of the state agency and foster homes. Delegation of responsibility for case management is as important as delegation of casework; licensing rules also can mandate that such activities be carried out and that delegation of responsibility be made clear. It is critically important that the child and the caregiver both know that the caseworker will see and talk

with the child alone periodically; a minimum of monthly contacts is needed for children in family foster homes and quarterly with institutions. These can be mandated in child placing agency rules. They also should be applicable to both public and private child placing agencies.

Purchase of child placement agency services by public child welfare agencies increases the distance between the staff of the state agency and foster homes which provide care. Delegation of responsibility for case management is as important as delegation of casework; licensing rules can mandate that such activities be carried out and that delegation of responsibility be made clear.

10. Child abuse and neglect reporting laws in every State require that alleged abuse be reported. In practice it is not carried out consistently within child care programs. There are various reasons including the reluctance of some program administrators to have to deal with the resulting negative publicity even though reporting is legally required. Licensing rules can mandate that each licensed center or agency have, and use, a policy for all staff on reporting child abuse internally and to the public agency which has statutory

responsibility for this. This not only gives an additional control, it also provides an incentive because non-compliance may place the license in jeopardy.

11. Requiring criminal background checks has become the norm in recent years. It is mandated by licensing rules in most States and now also is a condition for obtaining certain Federal training funds. Record checks may be with local police, or the FBI and may include fingerprinting. States which have required criminal checks have found that some persons with abusive backgrounds have been identified. It also may be assumed that the fact of obtaining criminal checks, and the fear of being identified appropriately deters some persons from applying. The disadvantages reported most frequently, especially for fingerprint checks, is cost and long delays. Another concern is that many people who abuse children or have other perversions do not have a police record, and that the lack of a record can give a false assurance. The lack of a criminal record cannot be taken as an assurance that other precautions are not necessary.

It also is advisable that application forms for licensure and applications for child care employment ask the question whether the applicant has been convicted of a felony. If an affirmative answer is given licensing staff then are able to checkout the circumstances and make a determination of whether they constitute non-compliance with rules.

All the above matters are enforcable through the licensing rules, the licensing law and the state administrative procedures act. Non-compliance with licensing rules usually is correctable and in fact must be corrected. It also can lead to a loss of license and to prosecution if the operation continues without a license.

There are additional activities which are not rule enforcement activities that nevertheless are part of the licensing process and can have a strong positive impact upon child care with resulting reduction of abuse. The way that licensing is carried out can be more significant than the content of the law and rules. The following are some of these areas:

1. Although licenses generally are for one or two year periods, monitoring visits by licensing staff must occur much more frequently, approximately every three months. Changes in child child care programs can occur very quickly. Obviously variations in the norm of quarterly visits with particular licensees are appropriate depending upon the pattern of recent rule compliance of the program.

In practice, frequency of visits is dependent largely upon the size of the workloads of licensing staff. A general consensus of workload size for licensing of day care centers is 40 to 60, and approximately 30 for child welfare agencies.

2. When licensing staff carry out licensing studies they often talk with children apart from staff. Child protection would be increased if this practice were carried out routinely. Similarly in large programs discussion with direct care staff apart from administrators is appropriate. When it appears that there may be reason for suspicion, discussion with former staff can be very informative.

3. There are numerous benefits resulting from provision of consultation and information sharing by licensing staff. Programs which strive for excellence tend to be more child focused and therefore less likely to abuse children. There are many ways that licensing staff can assist providers to develop program excellence. Licensing staff usually have information and materials which providers and users (e.g. parents) do not have. Dissemination and sharing relevant information can be helpful to both providers and parents.
4. In virtually all the States the licensing rules stipulate that the license must be posted in a conspicuous place. One of the reasons for this is that the presence of a regular license indicates that licensing requirements have been met. A provisional license would indicate that some requirements are not being met. The license also is a reminder to everyone who sees it that the program is obligated to be in compliance with State requirements. It therefore tends to convey the message that questions of compliance can be taken up with the licensing authority. Since licensing units are imbedded in large State agencies however, access to licensing staff may not be apparent. Printing the name and telephone number of the licensing staff member on the license would greatly increase access

for concerned parents and staff. It also is recommended that licensing services be clearly identified in public telephone directories. Similarly, licensing staff should make licensing rules available to providers, their staff, and to parents whenever possible.

5. In recent years an emphasis upon the vested interests of providers has at times been given greater priority than protection of the persons under their control. In some instances a "right to a license" has taken precedence over the rights of persons whom the license is intended to protect. This is a judgement/attitude which is determined largely by courts and administrative law judges, but which also has pervaded the thinking of licensing staff far more than is necessary. Such presumptive thinking by licensing staff tends to be self-fulfilling. While this factor is significant, and the rights of all parties must be guarded, it is time that this emphasis be moved back to the place where it receives less priority than the protection of children.

6. When abuse is reported in licensed services, the allegation must be investigated by both licensing staff and protective services staff. The focus of these two investigations are quite different. Protective service staff's concern

primarily is with the individual child in question, what constitutes abuse, whether it occurred, by whom, what protection the child needs and whether prosecution is indicated. By contrast, the focus of licensing staff primarily is upon all the children, whether the circumstances of the particular abuse allegation jeopardizes all the children, and whether licensing rules were violated.

Penalties which licensing imposes relate to the license itself, not to prosecution of individual offenders. There are advantages to having joint investigations although in some instances this may not be possible. It is incumbent upon State agencies to clearly delineate the roles of protective service and licensing staff to increase their combined effectiveness.

When abuse has been established and it also is established that rules have been violated, which is usually true if the rules are adequate, licensing has the responsibility to point out violations, and require timely corrections, or to take action against continued licensure. Licensing not only is preventive in that it mandates conditions in which abuse is not likely, it also takes corrective action whenever abuse occurs.

7. Advocacy

Because of the vantage point of licensing staff they frequently are able to see issues and causal actors more clearly than others. For example, they may be able to see that mediocre child care is at least partially caused by low child care worker salaries. They may see that after-care services are not provided simply because the state has not devised a method for making such payments.

Conscientious licensing staff will bring such issues to the persons responsible for them, and press for change while also offering their assistance in helping to get the change implemented.

Finally, and in conclusion it is of utmost importance that reactions to child abuse not be so extreme or severe that they cause more harm than benefit. It is easy to overreact causing "over-kill" when a new phenomenon occurs especially if it is emotionally upsetting. It also must be kept in mind that child abuse appears to be a human phenomenon, not one that is caused primarily by substitute care givers.

According to statistics compiled by the American Humane Association 68% of all reported sexual abuse involved a parent; 1.5% of the reported cases involved baby-sitters or child care workers.

The major immediate question however, is not whether the recent surge of child abuse is a product of our times and therefore can be expected to pass without extensive corrective action. While it is apparent that controls are not adequate at the present time, many controls do exist and may in fact be very near the point of "critical mass" where controls are sufficient. It is possible that rather little additional control is needed, but that will never be known if heavy massive controls are initiated. In addition, every control has a price tag even though it may provide a benefit. Some "price tags", are the effect that the control has upon the programs rather than financial costs. Financial costs may be incurred in implementing the controls and also in the providers' complying with them. In addition some potentially good providers may be reluctant to be involved at all when overly-heavy scrutiny accompanies the area they otherwise would be interested in. Careful, selective changes to prevent abuses will have greater over-all positive impact and be more lasting than massive attempts to implement every conceivable protection.

It is not known at present whether the phenomenon of abuse is a part of human nature, and therefore is at least latent in all of us, or whether it is an aberration affecting relatively few people, requiring only highly specific, selective controls. It is clear however that tightening is needed. A great deal of tightening can be accomplished within the present system without adding additional bureaucratic over-lays, or massive investigative procedures.

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